In the Supreme Court of the United States.

OCTOBER TERM, 1903.

WILLIAM C. GIBSON, APPELLANT,
v.
THE UNITED STATES. } No. 195.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This cause was heard in the Court of Claims of the United States January 19, 1903, and the court made the following findings of fact:

I. The claimant, William C. Gibson, was duly appointed a captain in the Navy, to rank from February 18, 1900. While serving in that grade, then being an officer of the Navy, with a creditable record, who served during the civil war, he was retired by the following order:

"NAVY DEPARTMENT,
"*Washington, June 30, 1900.*

"SIR: On July 23, 1900, you will regard yourself transferred to the retired list of

officers of the U. S. Navy, in accordance with the provisions of section 1444 of the Revised Statutes, and with the rank and three-fourths of the sea pay of the next higher grade, *i. e.*, rear-admiral, in accordance with the provisions of section 11 of the naval personnel act, approved March 3, 1899.

"Respectfully,

"JOHN D. LONG,

"*Secretary.*

"Captain William C. Gibson, U. S. Navy, commanding U. S. S. *Texas*."

II. Since his retirement he has received pay at the rate of four thousand one hundred and twenty-five dollars ($4,125) a year, being three-fourths of five thousand five hundred dollars ($5,500), the pay fixed by section 1261 of the Revised Statutes of the United States as that of a brigadier-general in the Army.

If paid at the rate fixed by said section 1261 for a major-general in the Army, he would receive pay at the rate of three-fourths of seven thousand five hundred dollars a year, being five thousand six hundred and twenty-five dollars ($5,625) a year, a difference over and above what he has been receiving of one thousand five hundred dollars ($1,500) a year.

III. From January 22, 1900, to July 3, 1900, inclusive, claimant was, by regular assignment, in command of the U. S. S. *Texas*, a seagoing vessel in commission. During that period he was, prior to the 18th of February, a commander in receipt of pay

at the rate of four thousand dollars ($4,000) a year, and from and after that date, a captain receiving pay at the rate of four thousand five hundred dollars ($4,500) a year. He did not, while so attached to and in command of said vessel, receive any sea ration or commutation therefor, under Revised Statutes, sections 1578 and 1585 (reply of Navy Department, not printed).

The commutation therefor at the rate of thirty cents per day would amount to forty-eight dollars and ninety cents ($48.90).

(Record, pp. 3 and 4.)

From the foregoing findings of fact the court below decided as a conclusion of law that the petition should be dismissed, and judgment was entered on said 19th day of January, 1903, in favor of the defendants and dismissing the petition. (See record, pp. 12 and 13.) From the judgment so entered the claimant appeals to this court, and for assignment of errors states:

1. The court erred in holding that the claimant, as a rear-admiral of the Navy on the retired list, is entitled only to the retired pay of a brigadier-general in the Army, whereas said court should have held that he is entitled to the retired pay of a major-general in the Army, corresponding in rank to a rear-admiral in the Navy.

2. The court erred in holding that the claimant was not entitled to one ration, or commutation therefor, while at sea or attached to a sea-going vessel, whereas said court should have held that by virtue of the

provisions of sections 1578 and 1585 of the Revised Statutes he was entitled to thirty cents a day as the commuted value of a daily ration.

(See claimant's brief, p. 3.)

THE ISSUES.

The first question presented is whether a captain in the Navy, when retired as a rear-admiral under the provisions of section 1444, Revised Statutes, and section 11 of the navy personnel act, shall receive three-fourths of the pay of a rear-admiral in the first nine, or nine higher numbers, of the list of rear-admirals, or shall receive three-fourths the pay of a rear-admiral in the second nine, or nine lower numbers, of the eighteen rear-admirals; or, in view of the provisions of the navy personnel act, the question may be stated as follows: Whether the claimant is entitled to three-fourths the pay of a major-general or three-fourths the pay of a brigadier-general.

The second question for the court to pass upon is, Did the court below commit error in holding the claimant not entitled to one ration or commutation therefor while at sea or attached to a sea-going vessel; or, in other words, did the so-called "navy personnel act," passed March 3, 1899, repeal sections 1578 and 1585 of the Revised Statutes?

ARGUMENT.

The importance of this case is evidenced by the fact that this officer sues for the sum of $1,500 per year in addition to the amount he has heretofore

been receiving as retired rear-admiral, and if his contention is correct all rear-admirals retired under similar provisions are entitled to pay upon the basis contended for by claimant; and such pay will affect all rear-admirals now retired and hereafter retired under section 11 of the navy personnel act. The question of sea ration concerns every officer in the Navy who performs sea service.

Section 13 of said act provides in part as follows:

> That after June thirtieth, eighteen hundred and ninety-nine, commissioned officers of the line of the Navy and of the Medical and Pay Corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army. (See 30 Stat. L., p. 1007.)

Section 7 of said act provides for the active list of the line of the Navy and thereby created positions for twelve new rear-admirals, thus increasing the number of rear-admirals from six to eighteen, and omitted the rank of commodore from the active list. Therefore in promotion the gradation is from captain to rear-admirals. It may be pertinent to here state that the register of the Navy for January, 1903, contains the names of twenty-four rear-admirals on the active list, six of which number are placed on said list of rear-admirals and carried thereon as "additional in grade." Said rear-admirals carried as "additional in grade" are such rear-admirals as have been advanced by

reason of "eminent and conspicuous conduct in battle, or extraordinary heroism," as provided by section 1506, Revised Statutes.

The first proviso of said section 7 of the navy personnel act provides in part as follows:

> *Provided*, That each rear-admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowance as are now allowed a brigadier-general in the Army.
>
> (See 30 Stat. L., p. 1005.)

Section 11 of said act reads as follows:

> That any officer of the Navy, with a creditable record, who served during the civil war, shall, when retired, be retired with the rank and three-fourths the sea pay of the next higher grade.
>
> (See 30 Stat. L., p. 1007.)

Section 1444 of the Revised Statutes reads as follows:

> When any officer below the rank of vice-admiral is sixty-two years old, he shall, except in the case provided in the next section, be retired by the President from active service.

By reference to section 8 of the navy personnel act (30 Stat. L., p. 1006) it will be seen that provision is made for voluntary retirement of officers, and provides that they may be retired upon the rank and pay of the next higher grade, and the section retains the rank of commodore on the *retired* list for the purpose of fixing rank and pay of

officers voluntarily retired, as provided in said section 8.

Section 9 of the navy personnel act provides for involuntary retirement of officers, and also retains the rank of commodore on the retired list for the purposes of fixing rank and pay. Thus it will be seen that the rank of commodore has not been absolutely and entirely abolished by the operations of section 7 of the act, but that the rank is retained in both sections 8 and 9 of the navy personnel act for the purposes of fixing rank and pay of officers voluntarily or involuntarily retired.

Section 1466, Revised Statutes, provides as follows:

> The relative rank between officers of the Navy, whether on the active or retired list, and officers of the Army, shall be as follows, lineal rank only being considered:
>
> The vice-admiral shall rank with the lieutenant-general.
>
> Rear-admirals with major-generals.
>
> Commodores with brigadier-generals.
>
> Captains with colonels.
>
> Commanders with lieutenant-colonels.
>
> Lieutenant-commanders with majors.
>
> Lieutenants with captains.
>
> Masters with first lieutenants.
>
> Ensigns with second lieutenants.

Section 1261, Revised Statutes, establishes the pay of officers of the Army as follows:

> The officers of the Army shall be entitled to the pay herein stated after their respective designations:

The general, thirteen thousand five hundred dollars a year.

Lieutenant-general, eleven thousand dollars a year.

Major-general, seven thousand five hundred dollars a year.

Brigadier-general, five thousand five hundred dollars a year.

Colonel, three thousand five hundred dollars a year.

* * * * *

The Comptroller of the Treasury has passed upon the question presented in this case, and his opinion is as follows:

> An officer of the Navy with the rank of captain, retired under the provisions of section 11 of the navy personnel act of March 3, 1899, which provides that an officer with a creditable record and who has served in the civil war shall, when retired, be retired with the rank and three-fourths the sea pay of the next higher grade, is entitled, on retirement after March 3, 1899, to three-fourths the sea pay of a rear-admiral of the nine lower numbers, or three-fourths the pay then received by a brigadier-general of the Army. (See Decisions of the Comptroller, Vol. V, p. 750.)

Also in passing upon a similar question the Comptroller says:

> If retired as in the grade of captain he would be entitled to only the retired pay of the junior grade of rear-admirals, which is the next grade for pay above that of captain, but

> if returned as though in the junior grade of rear-admiral or as commodore, he would be entitled to the retired pay of senior officer in that grade, or an admiral above the nine lower numbers. (See Decisions of the Comptroller, Vol. V, p. 822.)

Again, in volume 7, Decisions of the Comptroller of the Treasury (p. 164), the Comptroller says:

> The navy personnel act abolished the grade of commodore and practically constituted a new grade for pay purposes within the grade of rear-admiral, known as the nine lower numbers of that grade, and into this subgrade the commodores were advanced.

Claimant's counsel contend that there is no special provision in section 7 of the navy personnel act for the pay of any other rear-admirals than those embraced in the nine lower numbers of that grade; and further contend that the grade of rear-admiral, according to said section 7, is a single grade. But it must be remembered that this is a question of *pay*, not of *grade* or *rank*. The claimant has the advantage of being retired as a rear-admiral, with all the influence, dignity, respect, and deference shown to that high office, a distinction that captains, when retired upon voluntary or involuntary application under sections 8 and 9 of the navy personnel act, do not enjoy. Congress, by general law, has conferred this distinction upon claimant. But we are not dealing with rank or grade in this case. When a captain in the Navy

is retired with the rank and three-fourths the sea pay of the next higher grade, as provided in said section 11, Congress undoubtedly fixed that next higher *grade* for the purposes of pay by the first proviso of said section 7. The court will make no exception in this case, but will endeavor to ascertain the will and intention of the law-making power. All construction and interpretation of statutes is to the end that the intention of the legislature may be understood and enforced.

> But an interpretation of a statute which must lead to consequences which are mischievous and absurd is inadmissible if the statute is susceptible of another interpretation by which such consequences can be avoided. For this purpose all parts of the statute are to be read and compared. (See Sutherland on Statutory Construction, sec. 238.)

Again:

> The question for the courts is, what did the legislature really intend to direct, and this intention must be sought in the whole of the act taken together and other acts in *pari materia*. (Same author, p. 316.)

In seeking to give the proper construction and interpretation to the statutes under consideration, we do not think a stronger argument can be presented in behalf of defendant's contention than the language used by Judge Peelle when construing section 7 in his opinion in the case of *Frederick Rodgers* v. *The United States*, which opinion has

been sustained by this court. The learned judge says:

> So that for the purposes of pay a distinction is created by the act in the grade of rear-admirals and special provision made therefor. (36 C. Cls. R., p. 275.)

In the opinion forming the decision of the court below in the Rodgers case Mr. Justice Brewer, speaking for this court, says:

> The individuals thus raised in rank were not so raised on account of distinguished services or for any personal reason, but simply in consequence of the abolition of the official rank they had held. Is it unreasonable to believe that Congress thought it unwise to give to those officers (who had neither by length of service or by personal distinction become entitled to the position of rear-admiral, as it had stood in the past) all the benefits of such position? Would it be unnatural for Congress to bear in mind those who by length of service or by personal distinction had already earned the position, and provide that in, at least, the matter of pay there should be some recognition of the fact? Again, is it unreasonable to believe that Congress intended that those officers whose past services placed them according to the prior relative rank side by side with brigadier-generals of the Army, should not, by a mere change of statute, be given a benefit in salary which was not at the same time accorded to brigadier-generals in the Army? May not this explain

> its action in so dividing the rear-admirals into two classes—one composed substantially of former rear-admirals, equal both in rank and pay with major-generals in the Army, and the other of those who in the past were only commodores, to whom was given the rank of rear-admirals but the pay of brigadier-generals in the Army?
>
> (See 185 Supreme Court Rep., p. 91.)

If we apply the foregoing reasoning to the case at bar it would seem improbable that Congress intended to place upon retired pay at the rate of three-fourths of $7,500 per year, an officer who, but five months and five days previous to his retirement was below the rank of captain in the Navy.

Again, if claimant's contention is correct, he, as a retired officer, with no duties or responsibilities to perform other than to draw his salary, would be entitled to receive, as such retired rear-admiral, the sum of $5,625 per annum, while the rear-admiral on the active list in the nine lower numbers, charged with all the grave responsibilities incident to active service, receives but $5,500 per year. Certainly such was not the will and intention of Congress.

Counsel devotes considerable space in their able brief seeking to emphasize claimant's faithful services. (See claimant's brief pp. 25 to 27.) The claimant was appointed a captain only five months and five days before he was promoted and

retired as rear-admiral. He was not raised in rank to rear-admiral on account of distinguished service, or for any personal reason. However creditable his service may have been, there is nothing in the record that emphasizes and distinguishes this service as "eminent and conspicuous conduct in battle or extraordinary heroism" beyond others who have been promoted and retired in the due process of law.

Counsel insist that there is no difference in grade between one rear-admiral and another. If the terms "grade" and "rank" are synonymous, and especially are to be treated as exact synonyms, then claimant's counsel are probably correct. We frankly admit that for all purposes, except pay purposes, there is no difference in the rank between one rear-admiral and another, but we again call the attention of the court to the fact that this case has nothing whatever to do with the rank of the claimant. Defendant having conferred upon claimant the dignity and distinguished rank of rear-admiral does not now seek to deprive him of any of the honors or dignity therewith conferred. Congress said, in said section 11, that claimant should be retired with the *rank* and three-fourths the sea pay of the next higher *grade*. If the law-making power did not recognize any difference for the purposes of pay between rank and grade why say anything about three-fourths pay of next higher *grade?* Why should the statute have been

clothed in language that would raise any question in the mind of the interpreter as to the meaning between grade and rank? Congress could as easily have expressed itself by saying that the officer should be retired with the next higher *rank* and three-fourths the sea pay of that rank; but evidently it did not, in said section, consider *rank* and *grade* as synonymous. The learned judge of the court below who delivered the opinion governing this case presents in the strongest terms the reasoning of the court in arriving at its conclusion of law, and we here quote a part of said opinion in order that the court may have the same in convenient form:

> It is contended that this definition of the relative rank between the officers of the Army and Navy tends to strengthen the claims of the plaintiff.
>
> The decision settles the rank of the claimant, but that does not settle the question in issue in the case.
>
> It is said in that connection that there is no exception in the terms of the law which justifies the claimant being placed on the lower basis of pay, but in reply to that it may be said that there is no provision of the law placing him on the higher basis, the pay of an admiral.
>
> The statute has made a distinction in pay of the admirals on the active list by a classification by numbers, and upon that classification has based the emoluments of the rank, and when the claimant is placed in the

rank he confronts two conditions which may from the pay be called the higher and lower number.

It is ably argued by the counsel in the case of Gibson, No. 22864, and in this case, that there is no room for construction of the act upon which the claimants' right is based; that the words of the law are plain and unambiguous, and therefore it is the duty of the court to enforce the statute by the application of its terms and language. Many authorities are cited to sustain the theory that where the words are plain and unambiguous there is no room for construction or interpretation, and therefore the simple duty of the court is to apply the law as by its terms it has been enacted by the legislature. It is said in substance that section 11 does not provide that a captain who has served during the civil war upon retiring with the rank of a rear-admiral shall receive less than the rank of a rear-admiral, and that the classification of higher or lower numbers is intended for the active list of the Navy, and has no application to the claimant, he being on the retired list; that if it had been the intention of Congress that the claimant was to receive the pay of a brigadier-general, it would have been so provided in the statute, and that in the absence of any such provision the statute must be interpreted, not from conditions existing in the retired list, but from the words of the law. In support of the theory that where the real meaning of the statute is plain and there is no room for

ambiguity, it is the duty of the court to enforce it according to its very language.

Our attention has been cited to the cases of *Lake County* v. *The United States* (130 U. S., 662, 663); *United States* v. *Tyler* (105 U. S., 244); *Thornley* v. *The United States* (173 U. S., 310); *Queen* v. *Poor Law Commission* (6 Adolph and Ellis, 66); *County Seat of Linn County* (15 Kansas, 501), and other cases, establishing the well-settled doctrine that statutes are to be applied and not construed when no doubt arises from the words and provisions of the law. We have carefully examined the cases relied on by counsel in both cases; but do not find that they settle the controversy arising upon the words and terms of the various statutes in relation to the subject-matter of this proceeding, as contended by claimants.

In the construction of the thirteenth section of the personnel act, and the section of said act which makes a distinction in the pay of rear-admirals dependent upon their grade in numbers, we are dealing with a condition arising from the proviso making such distinctions, and must deal with that condition in the most reasonable way in determining the will of the legislature. The two sections taken together require construction and interpretation, and we are not confined to the application of the mere words of the statute. Where the words are plain and unambiguous, the duty of the court is to apply the plain words of the statute; but when the subject-matter of

the law is somewhat variable, then it is the duty of the court to so interpret or apply the words of the law as is most reasonable and just to such conditions, and thereby effectuate the intent of the legislature. Upon the transfer of the claimant to the retired list of the Navy, by operation of law he succeeded to the next highest rank as a rear-admiral, it is true, but in that rank we find a classification as to pay; that classification has a higher and lower grade of pay, one half receiving the sum of $7,500 and the other half the sum of $5,500. The question in this case is not a question of rank but of pay, and the next highest pay to a captain (the rank of commodore being abolished by the personnel act) is that of an admiral in the lower number of the list of admirals.

As has been said, this is a question of pay and not of rank in the active list of the Navy, and we find a classification of admirals as to pay, the higher numbers receiving the larger pay and the lower numbers the smaller pay. The intent of the personnel act, as shown by the words of the statute, was to promote the claimant to the corresponding rank in the Army, but the rank in the Navy corresponding to the rank in the Army has two grades of pay, depending on the number which is held by the respective officers, thereby establishing a variety in the condition of pay. Promotion, unless otherwise ordered, is by regular

gradation, and each step is presumed to be taken, unless otherwise provided. Applying that rule to the case of the claimant, his first step, being promotion of pay, would be into that grade having a lower rate of pay, and not into the grade having the right of higher pay.

The main object of the act of March 3, 1899, in dealing with the rights of the claimant was promotion for the purpose of pay, and not of rank; and the qualifications on that promotion "with rank and three-fourths sea pay of the next higher grade, i. e., rear-admiral," as stated in the order, following the substance of the statute, must mean the pay of a brigadier-general, that pay corresponding with the pay of the nine lower numbers on the active list.

Pay and not rank being the paramount purpose of the law, we must regard the grades of pay which we find incident to the active list of the Navy, and at the threshold of those grades looking at and for the "next higher" we find as the lowest grade of pay the pay of a brigadier-general, and keeping in view the idea of it being a question of pay we must adopt as the "next higher" the lower grade of pay.

(See Record, pp. 6 to 8, inclusive.)

That Congress created two grades for the purposes of pay in the list of rear-admirals is clearly set forth by the decision of the court in the Rodgers case, and in the opinion of the court below in the Lowe case, a copy of which is contained in

the record, and it has been further clearly determined by these decisions that the next higher grade to which captains of the Navy are entitled to promotion for the purposes of pay, when retired under section 1444 of the Revised Statutes and section 11 of the navy personnel act, is the grade known as the nine lower numbers, or the second nine of the list of rear-admirals.

For the foregoing reasons we think that on the first question presented to the court the opinion of the court below should be affirmed.

SEA RATION.

On the second assignment of error claimant's attorneys contend that sections 1578 and 1585 of the Revised Statues are not repealed by section 13 of the navy personnel act, said sections reading as follows:

> SEC. 1578. All officers shall be entitled to one ration, or to commutation therefor, while at sea or attached to a seagoing vessel.
>
> SEC. 1585. Thirty cents shall in all cases be deemed the commutation price of the navy ration.

Section 13 of the navy personnel act (30 Stat. L., p. 1007) provides:

> SEC. 13. That after June thirtieth, eighteen hundred and ninety-nine, commissioned officers of the line of the Navy and of the Medical and Pay Corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance

of law for the officers of corresponding rank in the Army: *Provided*, That such officers when on shore shall receive the allowances, but fifteen per centum less pay than when on sea duty, but this provision shall not apply to warrant officers commissioned under section twelve of this act: *Provided further*, That when naval officers are detailed for shore duty beyond seas they shall receive the same pay and allowances as are or may be provided by or in pursuance of law for officers of the Army detailed for duty in similar places: *Provided further*, That naval chaplains, who do not possess relative rank, shall have the rank of lieutenant in the Navy, and that all officers, including warrant officers, who have been or may be appointed to the Navy from civil life shall, on the date of appointment, be credited, for computing their pay, with five years' service. And all provisions of law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or any property hereafter captured, condemned as prize, or providing for the payment of bounty for the sinking or destruction of vessels of the enemy hereafter occurring in time of war, are hereby repealed: *And provided further*, That no provision of this act shall operate to reduce the present pay of any commissioned officer now in the Navy; and in any case in which the pay of any such an officer would otherwise be reduced he shall continue to receive pay according to existing law: *And provided fur-*

ther, That nothing in this act shall operate to increase or reduce the pay of any officer now on the retired list of the Navy.

It has been generally recognized by the accounting officers, the personnel of the Navy, and by the courts that the "navy personnel act," in so far as it relates to pay and allowances, was enacted for the purpose of equalizing the pay of officers of the Army and officers of the Navy of relative or corresponding rank. Congress recognized the inequality of pay and allowances, which in some instances was in favor of the army officer and in some cases in favor of the naval officer, and in order to effect an equal pay and allowance, in so far as practicable, and at the same time avoid the reduction of pay of any officer then in the Navy, Congress inserted the provisions concerning pay and allowances found in said section 13 of said navy personnel act.

It is conceded by claimant that sea ration is an allowance. (Claimant's brief, p. 38.) It is also conceded that army officers do not receive a ration. (Claimant's brief, p. 36.)

It will be seen by the fourth proviso of said section 13 that Congress carefully preserved the existing rates of pay to officers then in the Navy so that in no case could their pay be reduced, and whenever the old navy pay, as provided by section 1556 of the Revised Statutes, was *less* than the army pay upon which naval officers were placed by the operation of the statute, the officer receives the

advantage of the increased rate of pay provided by said section 13. It will be further observed that said fourth proviso in the section prohibits the reduction of *pay*, but does not prohibit the reduction of *allowances* to naval officers. It would seem, then, from the general terms and meaning of the statute, that those naval officers who at the time of the passage of the navy personnel act were receiving greater pay than they would receive under the navy personnel statute, but for the fourth proviso, should be continued upon the old navy pay, as provided in section 1556 of the Revised Statutes, and those naval officers who at the time of the passage of the navy personnel act were receiving less pay than was provided by the terms of said act, should at once enter upon the new schedule of pay provided by said section 13. By the terms of the act officers of the line of the Navy are to receive the same pay and allowances, except forage, as are or may be provided by and in pursuance of law for officers of corresponding rank in the Army. As we have stated, the fourth proviso prohibits the reduction of pay, but leaves the officer who receives greater pay under the old navy pay, as fixed by section 1556 of the Revised Statutes, in full enjoyment of *all the allowances*, except forage, as are provided for officers of corresponding rank in the Army, these allowances being in the nature of quarters, fuel, and mileage. In doing so we think Congress clearly intended to take

from the naval officer sea ration and give him allowances that the army officer enjoyed, and to which the naval officer was not entitled before the passage of the navy personnel act.

It must be conceded that sections 1578 and 1585 are not repealed in expressed direct terms by said section 13 of the navy personnel act, but we insist that a reasonable and correct interpretation of section 13 necessarily leads to the conclusion that said sections 1578 and 1585, Revised Statutes, are repealed by implication. We do not hesitate to at once acknowledge the full force and effect of the rule invoked by claimants' counsel that repeals by implication are not favored. Repeals by implication are recognized as intended by the lawmaking power, and the legislative intention to repeal is ascertained by construction and interpretation, just as the legislative intent is ascertained in other respects, when not declared in expressed and direct terms. And when two acts are repugnant, although they may not be so in expressed terms, yet if the last act covers the whole subject of the first act, it will operate by implication as a repeal of the first act. The whole subject embraced in sections 1578 and 1585, Revised Statutes, is the subject of allowances to naval officers. Section 13 of the navy personnel act certainly covers the question of allowances and embraces new provisions, these new provisions being the granting of army allowances to naval officers instead of the allow-

ances they formerly received. If Congress had not intended to effect the repeal, it certainly would have said so in some kind of terms that would not leave the matter doubtful. In granting army officers' allowances to naval officers Congress would have used the term "additional allowances to that now provided by law," instead of "the same allowances as are now provided by law for army officers."

But while we acknowledge the well-recognized and established rule, that repeals by implication are not favored, there is another rule of construction as well grounded and settled as the rule urged by claimant, and it is stated in the case of the *District of Columbia* v. *Hutton* (143 U. S., p. 18). On page 26 of the report cited Mr. Justice Lamar says:

> We are not unmindful of the rule that repeals by implication are not favored. But there is another rule of construction equally sound and well settled which we think applies to this case. Stated in the language of this court in *United States* v. *Tynen* (11 Wall., 88, 92), it is this: "When there are two acts on the same subject the rule is to give effect to both if possible. But if the two are repugnant in any of their provisions, the latter act, without any repealing clause, operates to the extent of the repugnancy as a repeal of the first; and even where two acts are not in express terms repugnant, yet if the latter act covers the

> whole subject of the first, and embraces new provisions, plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act." (See also *Murdock* v. *Memphis*, 20 Wall., 590, 617; *Tracy* v. *Tuffly*, 134 U. S., 206, 223; *Fisk v. Honario*, 142 U. S., 459.)

Section 13 specifically provides that officers then in the Navy shall not be reduced in *pay*, but does not provide that they shall be protected in their *sea ration;* and had Congress intended to protect those officers in receiving sea ration, as provided in sections 1578 and 1585, Revised Statutes, why did not the legislators preserve the same caution in the express provision that they did on the question of pay? In placing naval officers upon the same pay and allowances as army officers, Congress equalized the allowances given each set of officers, and in doing so bestowed upon the naval officers much greater benefits and compensation in the way of allowances than they had formerly enjoyed; but to grant naval officers the same pay and allowances as army officers, and then to consider the statute to mean that the allowances thus granted to naval officers were to be an addition to those allowances they were receiving prior to the passage of the navy personnel act, would be to say that Congress sought and intended to discriminate in allowances between the two sets of officers and that its favor was bestowed in that discrimination upon the navy officers by permitting them to enjoy

a ration or commutation therefor which it did not grant to the army officers.

This construction would be out of harmony with the navy personnel act. Section 13 of the act covers the whole subject of pay and allowances. It was one of the chief objects and purposes, as we have seen, to equalize and harmonize the pay and allowances of officers of the Navy and Army in so far as practicable.

REPEAL BY REVISION.

> A revision is intended to take the place of the law as previously formulated. * * * The revision is a substitute; it displaces and repeals the former law as it stood relating to the subjects within its purview.
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> In *Bartlett* v. *King*, Dewey, J., said: "A subsequent statute revising the whole subject-matter of a former, and evidently intended as a substitute for it, although it contains no express words to that effect, must, on principles of law, as well as in reason and common sense, operate to repeal the former." (See Sutherland on Statutory Construction, sec. 154, p. 207.)

Of the many authorities presented in support of the foregoing principles announced by the author, the case of *King* v. *Cornell* (106 U. S., 395), concerning the removal of causes to Federal courts, is particularly applicable to the case at bar, but the doctrine announced by the author is supported by a long list of authorities and is recognized by the

highest courts of the various States throughout the country. The author continues:

> Though a subsequent statute be not repugnant in all its provisions to a former, yet if it was clearly intended to prescribe the only rule which should govern, it repeals the former statute. (See foregoing section and page and the large list of authorities cited.)
>
> Does a revision import that it shall displace the last previous form; that it is evidently intended as a substitute for it; that it is intended to prescribe the only rule to govern? *In other words, will a revision repeal by implication previous statutes on the same subject, though there be no repugnance? The authorities seem to answer emphatically,* YES. The reasonable inference from a revision is that the legislature can not be supposed to have intended that there should be two distinct enactments embracing the same subject-matter in force at the same time, and that the new statute, being the most recent expression of the legislative will, must be deemed a substitute for previous enactments and the only one which is to be regarded as having the force of law. (See Sutherland on Statutory Construction, p. 208.)

Again—

> A revising statute embracing antecedent general laws on various subjects and reducing them to one system and one text repeals all prior statutes upon the same subjects not included in the body of the revision

and not exempted by an express clause. (See the author cited, sec. 155.)

It certainly seems that no more appropriate case could be presented for the operation of this doctrine than the one now before the court. Section 13 of the navy personnel act, in treating of the whole subject of pay and allowances of naval officers, sought to reduce the question to one system and one text, and therefore it repeals all prior statutes upon the question of pay and allowances to naval officers that are not exempted by an express clause. The fourth proviso of section 13 of the navy personnel act preserved section 1556, Revised Statutes, in so far as pay is concerned, to those officers, and those officers only, who were in the Navy at the time of the passage of the act, but it does not protect them in allowances in way of sea ration.

We do not hesitate to rest the question as to the repeal of sections 1578 and 1585, Revised Statutes, upon the general scope and meaning of the navy personnel act as viewed in the light of the well-known doctrines we have herein presented. The standard furnished by the authorities for the interpretation of the statute clearly demonstrates that it was the intention and purpose of Congress to take from naval officers sea ration when it gave them the greater benefit of quarters and fuel.

The opinion of the court below, on which the case at bar was decided, was rendered in the case

of *Charles M. Thomas* v. *The United States*, and is found on pages 9 to 12, inclusive, of the record. Without reproducing the opinion here, we respectfully refer the court to the same, and believe it to be a strong argument in favor of defendants' contention in this case and clearly interprets the statutes under consideration, and forcibly sets forth the intention and purpose of Congress found in said section 13 of the navy personnel act.

We respectfully ask that the judgment of the court below be affirmed.

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